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Attorneys for Defendants

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff Investment
Securities LLC,

Plaintiff,

v.

EFG BANK S.A., f/k/a EFG Private Bank S.A.,
EFG BANK (MONACO) S.A.M., f/k/a EFG
Eurofinancière d'Investissements S.A.M., and
EFG BANK & TRUST (BAHAMAS)
LIMITED, as successor-in interest to Banco
Atlántico (Bahamas) Bank & Trust Limited,

Defendants.

Adv. Pro. No. 12-01690 (CGM)

**DECLARATION OF PAUL
KANELLOPOULOS IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
THE AMDENDED COMPLAINT**

Paul A. Kanellopoulos, under penalty of perjury, declares:

1. I am a member of the bar of the State of New York and an attorney at Kobre & Kim LLP, counsel for EFG Bank S.A. (a/k/a EFG Bank AG) ("EFG Bank"), EFG Bank (Monaco) S.A.M. ("EFG Monaco"), and EFG Bank & Trust (Bahamas) Limited ("EFG Bahamas," and collectively, the "EFG Defendants,") in this adversary proceeding. I submit this declaration in support of the motion to dismiss the Amended Complaint filed by plaintiff Irving H. Picard, Trustee (the "Trustee") for the Liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the Estate of Bernard L. Madoff in this adversary proceeding. The statements contained herein are based on my personal knowledge or on my review of relevant documents or information.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Amended Complaint filed in the above-captioned Adversary Proceeding, with exhibits thereto.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Second Amended Complaint filed by the Trustee in *Picard v. Fairfield Sentry Ltd., et al.*, Adv. Pro. 09-01239 (Bankr. S.D.N.Y.) (the "Fairfield Action"), Docket No. 286, without exhibits.

4. Attached hereto as Exhibit 3 is a true and correct copy of the First Amended Complaint filed by the Trustee in the Fairfield Action, Docket No. 23, without exhibits.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Settlement Agreement dated as of May 9, 2011 between the Trustee and Kenneth Krys and Joanna Lau, as Joint Liquidators of Fairfield Sentry Limited ("Sentry"), Fairfield Sigma Limited ("Sigma"), and Fairfield Lambda Limited ("Lambda"), as filed in the Fairfield Action, Docket No. 69-2.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Consent Judgment against Sentry, as filed in the Fairfield Action, Docket No. 109.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Consent Judgment against Sigma, as filed in the Fairfield Action, Docket No. 110.

8. Attached hereto as Exhibit 7 is a true and correct copy of the Consent Judgment against Lambda, as filed in the Fairfield Action, Docket No. 108.

9. Attached hereto as Exhibit 8 are true and correct copies of Exhibits 8, 10, 12, 13, 14 and 21 to the Second Amended Complaint, as filed in the Fairfield Action, Docket Nos. 286-8, 286-10, 286-12, 286-13, 286-14, 286-21.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Trustee's Twenty-Eighth Interim Report for the Period April 1, 2022 through September 30, 2022, as filed in the substantively consolidated SIPA liquidation proceeding captioned *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789, Docket No. 22500.

11. Attached hereto as Exhibit 10 is a true and correct copy of the United Kingdom Privy Council's judgment in *Fairfield Sentry Ltd. v. Migani*, [2014] UKPC 9, available at <https://www.jcpc.uk/cases/docs/jcpc-2012-0061-judgment.pdf>.

12. Attached hereto as Exhibit 11 is a true and correct copy of an excerpt from the Declaration of Thomas L. Long, attaching the August 14, 2006 Private Placement Memorandum of Fairfield Sentry Limited, as filed with the Court in *Picard v. Bureau of Labor Insurance*, Adv. Pro. No. 11-2732 (SMB) (Bankr. S.D.N.Y.), Docket No. 46.

13. Attached hereto as Exhibit 12 is a true and correct copy of an excerpt from the Declaration of William Hare, attaching the Memorandum of Association and Articles of Association of Sentry, as filed with the Court in *In re Fairfield Sentry, et al.*, Chapter 15 Case No. 10-13164 (Bankr. S.D.N.Y. Oct. 21, 2016), Docket No. 925.

14. Attached hereto as Exhibit 13 is a true and correct copy of the decision of the Eastern Caribbean Court of Appeal in *Quilvest Finance Ltd. v. Fairfield Sentry Ltd.*, Case Nos. HCVAP 2011/041-062.

Banco Atlántico (Bahamas) Bank & Trust Limited (“Banco Atlántico”)

15. The Trustee alleges that in June 2005 EFG Bahamas acquired the assets and liabilities of Banco Atlántico and Banco Atlántico was thereafter dissolved.

16. The acquisition agreement governing the asset sale is, by its terms, confidential and may not be disclosed unless required by law or unless mutually agreed by the parties to the transaction. Therefore, I proffer the following facts, which can be established through witness testimony and documentary evidence at any evidentiary hearing:

- a. On or about February 16, 2006, EFG Bahamas acquired the private banking business of Banco Atlántico through an asset sale, with limited acquisition of liabilities.
- b. EFG Bahamas was created to acquire the private banking business of Banco Atlántico through the asset sale.
- c. The transfer of such business pursuant to the asset sale did not include liabilities associated with the claims brought in this proceeding.

Other Fairfield Subsequent Transfers Alleged by the Trustee

17. The Trustee has brought adversary proceedings against dozens of defendants seeking to recover alleged subsequent transfers of BLMIS customer property that these defendants allegedly received from Sentry. The adversary proceedings are identified in the enclosed Appendix 1.

18. Based on my review of the proceedings listed in Appendix 1,¹ the total amount of post-May 9, 2003 subsequent transfers of property claimed by the Trustee against all defendants totals \$5,265,983,220—approximately \$2 billion more than the total amount of BLMIS customer property allegedly transferred to Sentry itself. This aggregate total consists of approximately (1) \$824,681,274 in alleged subsequent transfers to Sigma and Lambda; (2) \$1,035,259,311 in alleged subsequent transfers to individuals and entities connected to Fairfield Greenwich Group; and (3) \$3,406,042,635 in alleged subsequent transfers to defendants in other adversary proceedings.

19. Based on my review of the proceedings listed in Appendix 1, the trustee alleges the following:

- a. On May 9, 2003, BLMIS transferred \$40 million to Sentry.
- b. From May 14, 2003 to May 20, 2003, Sentry paid out at least \$46.7 million to other parties, \$6.7 million more than it had received from BLMIS, thus more than exhausting the funds it had received from BLMIS on May 9, 2003.
- c. On June 16 and June 18, 2003, Sentry paid out at least an additional \$10.4 million to other parties.
- d. On July 11, 2003, BLMIS transferred \$55 million to Sentry.
- e. From July 14 to July 16, 2003, Sentry paid out at least \$92.4 million to other parties, \$37.4 million more than it had received from BLMIS, thus more than exhausting the July 11, 2003 transfer from BLMIS.
- f. On July 22, 2003, BLMIS transferred \$25 million to Sentry.

¹ The amount alleged against each defendant frequently changes as a result of amendments to the pleadings by the Trustee in the various proceedings. The numbers stated below are based on my review of the operative pleadings in each proceeding as of June 24, 2022.

g. From July 23 to September 18, 2003, Sentry paid out at least \$42.7 million, \$17.7 million more than it had received from BLMIS, thus more than exhausting the July 22, 2003 transfer from BLMIS.

20. The Trustee alleges that the EFG Defendants cumulatively received approximately \$56.9 million in subsequent transfers on October 14, 2003, November 21, 2003, February 18, 2004, March 18, 2004, April 21, 2004, May 17, 2004, June 17, 2004, June 23, 2004, July 16, 2004, August 13, 2004, September 15, 2004, October 19, 2004, November 16, 2004, December 13, 2004, January 14, 2005, January 20, 2005, February 16, 2005, and March 15, 2005 after Sentry exhausted the funds received from BLMIS on July 23, 2003.

21. Based on my review of the proceedings listed in Appendix 1, the trustee alleges the following:

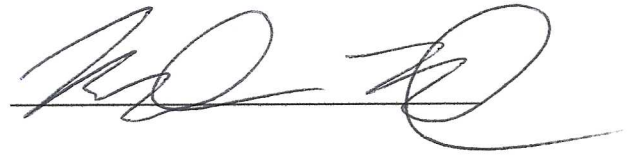
- a. On April 1, 2005, BLMIS transferred \$175 million into Sentry. Three days later, Sentry paid out \$200 million to a single recipient, thereby extinguishing any BLMIS Funds from the April 1 transfer.
- b. On July 6, 2005, BLMIS transferred \$85 million to Sentry.
- c. From July 13 to July 25, 2005, Sentry paid out at least \$114.8 million to other parties, over \$29.8 million more than it received from BLMIS, thus more than exhausting the July 6, 2005 transfer.

22. The Trustee alleges that the EFG Defendants cumulatively received approximately \$7.4 million in subsequent transfers on August 15, 2005, after Sentry exhausted the funds received from BLMIS on July 6, 2005.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 13, 2022

New York, New York

A handwritten signature in black ink, appearing to read 'Paul A. Kanellopoulos', written over a horizontal line.

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Appendix 1

Defendants Alleged to Receive BLMIS Property from Sentry by the Trustee

Adv. Pro. No.	Defendant
10-05345	Citibank, N.A., et al
10-05346	Merrill Lynch International
10-05348	Nomura International PLC
10-05351	Banco Bilbao Vizcaya Argentaria, S.A.
11-01724	Pictet et Cie.
11-01885	Safra New York
11-02149	Banque Syz & Co., SA
11-02493	Abu Dhabi Investment Authority
11-02537	Orbita
11-02538	Quilvest Finance Ltd.
11-02539	Meritz Fire & Insurance Co. Ltd.
11-02540	Lion Global Investors Limited
11-02541	First Gulf Bank
11-02542	Parson Finance Panama S.A.
11-02551	Delta National Bank and Trust Company
11-02553	Unifortune Asset Management SGR SpA, et al.
11-02554	National Bank of Kuwait S.A.K.
11-02568	Cathay Life Insurance Co. LTD.
11-02568	Cathay Bank
11-02569	Barclays Private Bank
11-02569	Barclays Spain
11-02569	Barclays Bank (Suisse) S.A. et al.
11-02570	Banca Carige S.P.A.
11-02571	BPES
11-02572	Korea Exchange Bank
11-02573	The Sumitomo Trust and Banking Co., Ltd.
11-02730	Atlantic Security Bank
11-02731	Trincaster Corporation
11-02732	Bureau of Labor Insurance
11-02733	Naidot & Co.
11-02758	Caceis Bank Luxembourg, et al.
11-02760	ABN Amro Bank N.V., et al.
11-02762	Lighthouse Diversified
11-02762	Lighthouse Supercash
11-02763	Inteligo Bank LTD.
11-02784	Somers Dublin Limited et al.
11-02910	Merrill Lynch Bank (Suisse) SA

11-02922	Bank Julius Baer & Co. Ltd.
11-02923	Falcon Private Bank Ltd.
11-02925	Credit Suisse AG et al.
11-02929	LGT Bank in Liechtenstein Ltd.
12-01002	The Public Institution For Social Security
12-01004	Fullerton Capital PTE Ltd.
12-01005	SICO Limited
12-01019	Banco Itau Europa Luxembourg S.A., et al.
12-01019	Banco Itau International
12-01021	Grosvenor Aggressive
12-01021	Grosvenor Balanced
12-01021	Grosvenor Private
12-01022	Credit Agricole (Suisse) SA
12-01023	Arden Asset Management, et al.
12-01046	SNS Bank N.V. et al.
12-01047	Koch Industries, Inc.
12-01048	Banco General S.A. et al.
12-01194	Kookmin Bank
12-01195	Six Sis AG
12-01202	Bank Vontobel AG et. al.
12-01205	Multi Strategy Fund Ltd., et al.
12-01207	Lloyds TSB Bank PLC
12-01209	BSI AG
12-01209	Banca del Gottardo
12-01210	Schroder & Co.
12-01211	Union Securities Investment Trust Co., Ltd., et al.
12-01211	Union Global Fund
12-01211	Union Strategy Fund
12-01216	Bank Hapoalim Switzerland
12-01216	Bank Hapoalim B.M.
12-01512	ZCM Asset Holding Co (Bermuda) LLC
12-01513	Citivic Nominees Ltd.
12-01565	Standard Chartered Financial Services (Luxembourg) SA, et al.
12-01566	UKFP (Asia) Nominees
12-01576	BNP Paribas S.A. et al
12-01577	UBS Deutschland AG, et al.
12-01577	LGT Switzerland
12-01669	Barfield Nominees Limited et al
12-01670	Credit Agricole Corporate and Investment Bank/BBH
12-01676	Clariden Leu AG
12-01677	Societe General Private Banking (Suisse) SA, et al.
12-01680	Intesa Sanpaolo SpA-Low Volatility

12-01680	Intesa Sanpaolo SpA-Medium Volatility
12-01690	EFG Bank S.A., et al.
12-01691	Banque Degroof Luxembourg
12-01691	Banque Degroof
12-01693	Banque Lombard Odier & Cie
12-01694	Banque Cantonale Vaudoise
12-01695	Bordier & Cie
12-01697	ABN AMRO Fund Services (Isle of Man) Nominees Limited, et al.
12-01698	Banque International a Luxembourg SA/Dexia
12-01699	Royal Bank of Canada, et al.
09-01239	Fairfield Sigma
09-01239	Fairfield Lambda
09-01239	Fif Advanced Limited
09-01239	Fairfield Investment Fund Limited
09-01239	Fairfield Greenwich Limited
09-01239	Fairfield Greenwich (Bermuda) Limited
09-01239	Fairfield Greenwich Advisors
09-01239	Amit Vijayvergiya